

REMARKS

The Office Action dated May 31, 2005 required restriction of the claims into two (2) claim Groups. In response, Applicants elect Species II directed towards claims 6-11, 16-20, and 26-31. Accordingly, the claims within Species I, namely claims 1-5, 12-15, and 21-25 are withdrawn from consideration.

However, Applicants do so with traverse. Applicants dispute the assertion by the Office that the two (2) claim Groups involve separate and distinct inventions.

35 U.S.C. §121 provides that "If two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions." The Examiner does not assert that the inventions of the two (2) claim Groups are independent. Rather, the Examiner alleges that the inventions of the two (2) claim Groups are distinct because they are directed to spatial light modulators for steering the reference beams and to MEMs mirrors for steering the reference beams. Applicants assert that restriction is improper because both claim species are directed towards steering the reference beam. The claim differences relate to the use of spatial light modulators or MEMs mirrors. Accordingly, the generic claim addresses the steering of the reference beam with the species directed towards the mechanisms used to steer the reference beam.

Applicants further urge the Examiner take into consideration that the subject matter of each of the claim Groups is linked by the common inventive concept relating to steering a reference beam.

According to M.P.E.P. §803, there are two criteria for a proper restriction requirement. First, the two inventions must be independent and distinct. In addition, there must be a serious burden on the Examiner if restriction is not required. Even if the first criterion has been met in the present case, which it has not, the second criterion has not been met. Applicants assert that a search into prior art with regard to the invention of the different Groups is so related that separate significant search efforts should not be necessary. In this regard, both searches would involve techniques relating to steering a reference beam, a limitation set forth in both claims. Accordingly, there is no serious burden on the Examiner to collectively examine the different claim Groups of the subject application. Therefore, restriction is not proper under M.P.E.P. §803.

Applicants also acknowledge a telephone call from the Examiner on May 18, 2005 relating to the request for an oral election to the restriction requirement but did not result in an election being made.

In view of the above, Applicants respectfully request the Examiner reconsider and withdraw the restriction requirement. It is also submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicants' undersigned attorney.

Respectfully submitted,

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Date: June 17, 2005

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